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Growth Through Agricultural Progress

STAFF PAPER

D I S C I P L I N A R Y

G U I D E

U. S. DEPARTMENT OF AGRICULTURE


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INTRODUCTION

This Staff Paper is a collection of information which will be of help to personnel and administrative officials who take disciplinary actions. This is not a part of the Administrative Regulations and is not intended to be regulatory. It is merely a guide or tool, the contents of which are based upon Civil Service Regulations, Administrative Regulations of this Department, and our experience in making disciplinary actions an effective part of good personnel management.

Chapter 58, Title 8, Administrative Regulations, is the authoritative regulation of the Department in this field. A copy of Chapter 58 is included in this Staff Paper for convenient reference.

Further revision of the DISCIPLINARY GUIDE is contemplated. Therefore, your comments, criticisms and suggestions are solicited.


John E. Francis, Chief,
Review and Adjudication Division


Carl B. Barnes
Director of Personnel

IMPORTANT CONSIDERATIONS
REGARDING
DISCIPLINARY PROBLEMS

Prompt and effective disciplinary action against employees who violate laws, regulations or instructions, or who become involved in other delinquency or misconduct, is a necessary and important phase of sound personnel management. Disciplinary action is necessary not only to penalize a delinquent employee and correct a specific problem. It is also necessary to maintain the respect of the public for the agency and Department and to maintain high morale. The public and employees will respect an agency which can enforce high standards of official and personal conduct. On the other hand, employee morale will suffer if management fails to deal promptly and effectively with an employee who is dishonest, negligent or guilty of misconduct.

To effectively achieve its purpose, disciplinary action must be prompt.

Disciplinary action must be fair. When deciding whether specified misconduct is proved, decide in favor of the employee if the evidence is so nearly balanced that there is a reasonable doubt as to his guilt.

In those cases, involving less serious violations of regulations, which do not require formal investigation, agency personnel officers should, nevertheless, satisfy themselves that they have written evidence of the facts before initiating disciplinary action. For example, in cases of unauthorized absence, it is necessary to establish that the employee was absent without authorization and to determine whether his excuse, if any, is factually true.

Whenever it is necessary to recommend or take disciplinary action, a memorandum should be prepared setting forth a concise summary of the essential facts. This summary is needed, even though a formal investigation report has been prepared.

When misconduct is evident, determine whether the offense warrants formal disciplinary action, or whether the problem can be corrected by personal counseling or an oral reprimand and warning. (If the case is handled by informal action a memorandum should be prepared for the confidential file.

Process the action promptly and submit the documents required to the Director of Personnel for postaudit. If the case is one in which the agency does not have delegated disciplinary authority, submit the file to the Director of Personnel, with a review memorandum containing a concise summary of the essential facts and a recommendation for the action believed to be warranted. In all such cases, the file should contain information of the employee's date of birth, status and tenure in the Civil Service, length of service in this Department, and right to veterans' preference.

PROCEDURES TO EFFECT ADVERSE ACTION

Process

1. Notice of proposed adverse action prepared upon receipt of evidence establishing a basis for proposed adverse action.
2. Delivery of notice of proposed adverse action to employee.
- *3. Employee submits written reply to notice of proposed adverse action. This normally occurs within 10 days from date of receipt of notice of proposed adverse action.
- *4. Employee makes personal reply (personal conference) to notice of proposed adverse action.
- **5. Official who held personal conference submits to agency a report of personal conference, to include findings and recommendations for disciplinary penalty.
6. Analysis made of case.
- ***7. Issuance of letter of decision.
8. Delivery made of letter of decision on or before its effective date.

*It is not mandatory that the employee make a written or personal reply, but it is his right to do so provided he does so in accord with the terms specified in the notice of proposed adverse action.

**Contingent upon the employee requesting a personal conference.

***May be issued at any time after employee has replied or has been given opportunity to reply, but the employee must have 30 full days of notice between the day he receives the notice of proposed adverse action and the effective date of the adverse action with the following exceptions:

1. When furlough without pay is necessitated by unforeseeable circumstances requiring immediate curtailment of activities.
2. Where reasonable cause exists to believe an employee guilty of a crime for which he can be imprisoned..

(See 22.201(c), Part 22, Civil Service Regulations, for added details.)

GUIDE TO
REGULATIONS GOVERNING
DISCIPLINARY ACTIONS

STATUS OF EMPLOYEE	ADVERSE ACTION CONTEMPLATED	GOVERNING REGULATIONS
In Competitive Service and has completed probationary period or trial period	<p>Discharge, reduction in rank or compensation, furlough without pay, suspension over 30 days</p> <p>Suspension for 30 days or less</p> <p>Reprimand or admonishment</p>	<p>Chapter S-1 and Parts 22 and 771 of Chapter Z-1 of F.P.M.; and Section 1, 2 and 3, Chapter 58, 8AR</p> <p>Chapter S-1; and Part 22 of Chapter Z-1 of F.P.M.; and Sections 1, 2 and 4 of Chapter 58, 8AR</p> <p>Sections 1 and 2, Chapter 58, 8AR</p>
In Competitive Service serving within probationary or trial period	<p>Discharge on basis of pre-appointment considerations (includes falsification of documents executed during appointment process)</p> <p>Separation or discharge for other than preappointment considerations</p> <p>Suspension or reprimand</p>	<p>Chapter S-1 and Part 22 of Chapter Z-1 of F.P.M.; and Sections 1, 2 and 4 of Chapter 58, 8AR</p> <p>Chapter S-1 and Part 22 of Chapter Z-1 of F.P.M.; and Sections 1, 2 and 4, Chapter 58, 8AR</p> <p>Sections 1&2, Chapter 58</p>
In Excepted Service and a preference eligible who has completed one year of current continuous service	<p>Discharge, reduction in rank or compensation, furlough without pay, suspension over 30 days</p> <p>Suspension for 30 days or less, or reprimand</p>	<p>Chapter S-1 and Parts 22 and 771 of Chapter Z-1 of F.P.M.; and Sections 1, 2 and 4, Chapter 58, 8AR</p> <p>Sections 1 and 2, Chapter 58, 8AR</p>
In Excepted Service	Any adverse action, reprimand or admonishment	Sections 1 and 2, Chapter 53, 8AR
Holding Temporary appointment in Competitive Service	Any adverse action, reprimand or admonishment	Sections 1 and 2, Chapter 58, 8AR

EXAMPLE

CONFIRMATION OF VERBAL REPRIMAND

(Tardiness)

To: Jane Doe
From: (Supervisor)
Subject: Tardiness

This memorandum will confirm our conversation of yesterday, during which you were reprimanded for having been tardy on the following occasions without satisfactory explanation:

<u>Date</u>	<u>Amount of Tardiness</u>
April 22-----	20 minutes
April 28-----	15 minutes
May 5-----	10 minutes
May 15-----	35 minutes

As you were informed during our conversation, it will be necessary to recommend more severe disciplinary action against you unless your practice of reporting late for work is corrected. I hope that such action will not be necessary and that we will have no further cause for complaint regarding your attendance record.

EXAMPLE

LETTER OF REPRIMAND
(Tardiness)

Miss Jane Doe
Clerk-Typist
Baltimore, Maryland

Madam:

There is before me for consideration a report from your official superior which discloses that you have been tardy in reporting for duty without satisfactory explanation.

The report discloses that on May 16, 19____, you were orally reprimanded by your official superior for tardiness on the following occasions:

<u>Date</u>	<u>Amount of Tardiness</u>
April 22-----	20 minutes
April 28-----	15 minutes
May 5-----	10 minutes
May 15-----	35 minutes

The report discloses further that this oral reprimand was confirmed in a memorandum addressed to you on May 17, 19____, in which you were warned that unless you corrected your practice of reporting late for work it would be necessary to recommend more severe disciplinary action against you.

That the oral reprimand and warning did not produce the desired results is evident from the following record of subsequent tardiness on your part:

<u>Date</u>	<u>Amount of Tardiness</u>
May 27-----	10 minutes
May 31-----	15 minutes
June 3-----	25 minutes
June 9-----	30 minutes

In view of the foregoing, your suspension from duty without pay as a disciplinary measure would be warranted, but it has been decided to limit disciplinary action in your case at this time to this letter of reprimand. You are warned, however, that continued tardiness on your part, without adequate reason, will be considered grounds for the imposition of a more severe penalty.

A copy of this letter will be filed in your official personnel folder.

Very truly yours,

(Working title of employment
officer)

EXAMPLE
LETTER OF CHARGES

(Proposing Action Less Severe than Removal, Reduction in Rank or
Compensation, or Suspension for More than 30 Days)

Mr. Richard Roe
Accountant
Philadelphia, Pa.

Sir:

This is a notice of a proposal to take adverse action against you.

There is before me for consideration a report which disclosed that you falsified an Application for Federal Employment (SF-57) which you executed on June 17, 1962, in connection with your present employment, by answering in the negative the question as to whether you had ever been arrested, convicted, or fined, or ordered to deposit bail or collateral, for the violation of any law, police regulation, or ordinance. The file discloses that on October 31, 1944, you were arrested by the Police Department in Atlanta, Georgia, on a charge of "disturbing the peace", and that you were fined \$5 and costs.

In view of the foregoing, you are hereby charged with falsification of an application for employment, and you are directed to show cause why you should not be suspended from duty without pay for 10 days or otherwise disciplined. You will be allowed 5 days from the date of your receipt of this communication to answer the said charge in writing and to submit such affidavits or other evidence as you may care to have considered in connection with your answer.

Very truly yours,

(Working title of employment
officer)

EXAMPLE
LETTER OF REPRIMAND AND SUSPENSION
(30 Days or Less)

Mr. Richard Roe
Accountant
Philadelphia, Pa.

Sir:

Careful consideration has been given to the charge preferred against you under date of December 2, 1962, your answer thereto, and the evidence in support of each.

It has been decided that the charge is sustained. The falsification of a Government record is a serious offense which warrants severe disciplinary action. However, in view of your otherwise satisfactory service, it has been decided to limit disciplinary action in your case at this time to this reprimand and a suspension from duty without pay from December 14 to 16, 1962, both dates inclusive. You will be restored to duty with pay effective December 19, 1962, but you are warned that in the future you will be expected to give complete and accurate information on all official records. Failure on your part to do so will result in a more severe penalty.

In accordance with the regulations of the United States Civil Service Commission pertaining to appeals, you have the right to appeal this decision to*(see footnote below) within ten days after the effective date of this decision on the grounds (1) that the agency has failed to follow the procedure prescribed by law or regulation, or (2) that the action was taken for political reasons (except as may be required by law) or (3) resulted from discrimination because of marital status or physical handicap.

It should be understood that this disciplinary action is based solely on your falsification of an application for employment, and not on the offense which led to your arrest.

A copy of this letter will be filed in your official personnel folder.

Very truly yours,

(Working title of employment
officer)

*In the case of a Washington Metropolitan area employee:

Chief, Appeals Examining Office
Office of the Executive Director
U. S. Civil Service Commission
Washington 25, D. C.

In the case of a field employee:

To appropriate Regional Director of the Commission with mailing address.

EXAMPLE
LETTER OF REPRIMAND TO SUPERVISORY OFFICIAL

Mr. Richard Roe
Administrative Officer
San Francisco, California

Sir:

There is before me for consideration a file which discloses that on three occasions during the past 6 months, Mr. John Doe, who is under your immediate supervision, has been under the influence of intoxicating liquor during official working hours, but that you failed to take any action with respect to this improper conduct other than to send the employee home and warn him as to his future conduct.

As a supervisory official you should be familiar with the Department regulations relating to the conduct of employees, and should be well aware of the fact that the regulations require that cases such as this be reported to the agency in order that appropriate disciplinary action may be taken. In neglecting to report this case, you not only failed to comply with the regulations but evaded your responsibility and acted contrary to the best interests of the service.

We cannot overlook this failure on your part to discharge properly the responsibilities of your position, but in view of your otherwise satisfactory record, it has been decided to limit disciplinary action in your case at this time to this reprimand. You are advised, however, that in the future you will be expected to comply fully with the regulations of the Department, and that if you fail to do so, consideration will be given to the imposition of a more severe penalty.

A copy of this letter will be filed in your official personnel folder.

Very truly yours,

(Head of Agency)

EXAMPLE
LETTER OF CHARGES

(Where proposed action is Removal, Reduction in Rank or Compensation,
or Suspension for More than 30 Days.)

Mr. John Doe
Clerk
Toledo, Ohio

Sir:

This is a notice of a proposal to take adverse action against you.

There is before me a file which discloses that on (date) you were reprimanded (or orally warned by Mr. (supervisor's name)) and suspended for neglecting your official duties. That reprimand warned you that further neglect of duty would result in more severe disciplinary action.

Notwithstanding this warning, the file discloses the following misconduct with which you are hereby charged:

CHARGE

NEGLECT OF DUTY

Specification: On (date) you erased records of experimental project ABC in XYZ building of your official station. These records were on page 10 of the record book entitled _____. This was a failure to follow the instructions of your supervisor _____ given on (date) which stressed to you and your fellow workers, Mr. A, Mr. B, and Mr. C, that no erasures were to be made in the experiment records.

In view of the foregoing, you are directed to show cause why you should not be removed from employment in the (Agency), suspended from duty without pay, or otherwise disciplined.

You will be allowed ten (10) days from the date of your receipt of this communication to answer the above charge personally or in writing, or both personally and in writing, and to submit such affidavits or other evidence as you may wish to have considered in support of your answer.

If you wish to be heard in person, you must request a personal conference, either in your written statement in answer to this charge, or separately, if no formal written answer is submitted.

If you request a personal conference, you will be notified of the arrangements for such a meeting with an official of your agency. At the conference, you will be given full opportunity to discuss the matters relating to the charge. It is preferable, however, that you submit a full and complete written answer prior to the holding of such conference.

You will be retained in an active duty status for at least 30 days following your receipt of this notice.

Very truly yours,

(working title of employment
officer)

EXAMPLE

LETTER OF DECISION

(Where the action ordered is Removal, Reduction in Rank
or Compensation, or Suspension for More than 30 Days.)

Mr. John Doe
Clerk
Toledo, Ohio

Sir:

My letter dated _____ proposed that you be removed from employment in (Agency's name) or otherwise disciplined. This proposal was based upon the charge of conduct prejudicial to the best interests of the service and the three specifications which supported it.

Your letter dated _____ contained your answer to the said charge and its specifications. You also made an oral answer to the proposal that you be removed in a personal conference with Mr. (name & title) on (date).

After careful consideration of the charge, the evidence, your answering letter and your answer in the personal conference, my finding with respect to the letter dated _____ is:

1. That the second specification is not proved.
2. That the first and third specifications are proved.
3. That the charge is fully sustained and warrants your removal from employment in (Agency's name).

Accordingly, it is ordered that you be removed from employment in (Agency's name) effective (date). (The notice of decision must be delivered to the addressee before the effective date of the adverse action.)

You have a right to appeal this action to the Secretary of Agriculture or to the Civil Service Commission, or first to the Secretary of Agriculture and then to the Civil Service Commission. If you appeal first to the Civil Service Commission, you will have no right to appeal to the Secretary of Agriculture. If you appeal to the Secretary of Agriculture you may not make a further appeal until the Secretary has made a decision against you or until 60 days have passed since the filing of your appeal, whichever occurs first. If you appeal to the Commission, your appeal to the Secretary of Agriculture will be automatically terminated.

An appeal to the Secretary of Agriculture should be addressed to Mr. Carl B. Barnes, Director of Personnel, U. S. Department of Agriculture, Washington 25, D. C. It must (1) be in writing, (2) set forth the basis for your appeal, (3) state whether you desire a hearing in connection

Mr. John Doe

with your appeal and (4) be submitted no later than 10 days after the effective date of your removal.

In order for your appeal to be considered by the Commission, it must (1) be in writing, (2) set forth your reasons for contesting the action against you, with such offer of proof as you are able to submit, and (3) be submitted no later than 10 days after the effective date of your removal or, if you have appealed to the Secretary, 10 days after the decision of the Secretary of Agriculture. Your appeal to the Commission should be addressed to the Chief, Appeals Examining Office, Office of the Executive Director, U. S. Civil Service Commission, Washington 25, D. C. (or appropriate Regional Director).

If you wish further information, make your request to: Mr. _____, Director, Personnel Division, (Agency).

Very truly yours,

PENALTIES

The following table lists the minimum and maximum penalties that should normally be imposed for first and subsequent offenses of the more common types of delinquency and misconduct. (The terms first offense, second offense, and third offense refer to the number of occasions on which the employee has been guilty of misconduct of the specified type and the misconduct was brought officially to the employee's attention.) A reasonable degree of uniformity in the imposition of penalties is desirable. Therefore, deviations from these penalties should be restricted to cases where there are unusual circumstances. Penalties should not be moderated because an employee belongs to a favored profession or class, because it would be difficult to replace him, or to avoid imposing a penalty which the employee would have a right to appeal.

The minimum penalty should ordinarily be imposed, but the maximum penalty should be applied when the misconduct was especially serious, disgraceful, or embarrassing to the Department or where numerous offenses have occurred.

In addition to the penalties listed, an offending employee who is not removed may be placed on disciplinary probation for a specified period--this action requires that a supervisor make necessary inquiries and report periodically with regard to the employee's conduct. A letter of reprimand must be issued in every case in which a suspension is imposed. When an employee is involved in more than one offense, his penalty should fall within the range listed for the most serious offense he has committed.

It is good personnel management to consider transfer and reassignment as a possible solution in problem personnel cases. (However, reassignments should be examined to determine that a reduction in rank is not involved. If there is a possibility that a reduction in rank may be involved, the procedures of Chapter 58 must be followed.) Transfers and reassignments are not disciplinary actions. Disciplinary action for any misconduct should be completed before a transfer or reassignment is ordered.

PENALTIES REQUIRED BY LAW

In certain situations the law prescribes a mandatory disciplinary suspension. For example, a suspension of not less than one month must be imposed for using or authorizing the use of a Government-owned passenger-carrying vehicle for other than official purposes. There are some offenses for which removal is made mandatory by law, examples of which include:

1. Prohibited political activities (unless the Civil Service Commission unanimously finds that removal is not warranted, in which case a minimum suspension from duty of 30 days must be imposed.)

2. Use of appropriated funds to influence Congress.
3. Acceptance of a bribe.
4. Participation in a strike against the Government.

CASES IN WHICH REMOVAL IS USUALLY APPLIED

The following offenses are usually considered sufficient grounds for removal.

1. Criminal, immoral, or notoriously disgraceful conduct.
2. Habitual excessive use of intoxicants.
3. Refusal to accept detail or transfer.
4. Presentation of a false claim.
5. Falsification of official records with intent to obtain personal gain or to conceal personal gain.

PENALTY GUIDE

DELINQUENCY OR MISCONDUCT

FIRST OFFENSE

SUBSEQUENT OFFENSES

Fiscal Irregularities:

- | | | |
|---|--|---------|
| 1. Misuse for personal gain, of Government funds or of other funds which come into an employee's possession by reason of his official position. | Removal | |
| 2. Submission of falsely stated travel, payroll, loan or purchase vouchers, or their supporting documents, to conceal or obtain personal gain. | Removal | |
| 3. Misuse of Government funds, or other funds which come into an employee's custody or control by reason of his official position, if not for personal gain. | Suspension for 1 pay period, to removal. | Removal |
| 4. Submission of falsely stated travel, payroll, loan or purchase vouchers, or their supporting documents, if not for personal gain but for administrative convenience or to avoid following required procedures. | Suspension for 1 pay period, to removal. | Removal |
| 5. Submission of falsely stated travel, payroll, loan or purchase vouchers, or their supporting documents, if not for personal gain, but to wrongfully benefit another. | Removal | |
-

DELINQUENCY OR MISCONDUCTFIRST OFFENSESUBSEQUENT OFFENSESFalsification of records:

1. Falsification of application for employment, or other personal history record, by omission or making a false entry, with respect to a material point (one which would have adversely affected selection for appointment or promotion).

Removal

2. Falsification of application for employment, or other personal history record, by omission or making a false entry, with respect to a minor point (one which would not have adversely affected selection for appointment or promotion).

Reprimand plus suspension for at least one day (If it is decided that the false statement was unintentional, no disciplinary action of record should be taken.)

Suspension for 1 pay period

3. Other falsification, including concealment of material facts by omissions, in official documents or records where property or funds are not misused.

Suspension for from 1 day to 2 pay periods depending upon gravity of the offense

Suspension of 1 pay period, to removal depending upon gravity of offense.

Conduct Prejudicial to the Best Interests of the Service:

1. Conduct which makes the employee subject to a criminal charge for which he might be imprisoned for one year or more.

Removal

2. Immoral or notoriously disgraceful conduct

Removal

DELINQUENCY OR MISCONDUCTFIRST OFFENSESUBSEQUENT OFFENSES

3. Concealing, removing, mutilating, altering or destroying Government records.

Removal

4. Asking for or accepting a bribe, loan, free service, or other favor from a subordinate employee, or from a person who has a personal or pecuniary interest in the manner in which the taking employee administers official regulations or performs his official duties.

Removal

Misuse of Government-owned or Government-leased Property:

1. Use of or authorizing use of Government-owned or Government-leased vehicles, facilities, or labor for other than official business.

One month's suspension (Unofficial use of Government passenger-carrying vehicles carries a mandatory penalty of suspension for 30 days)

Removal

Theft:

1. Theft from a non-Government establishment to which the employee is assigned for official duty.

Removal

2. Theft of Government owned property or theft from fellow employees.

Removal

DELINQUENCY OR MISCONDUCTFIRST OFFENSESUBSEQUENT OFFENSESInsubordination:

1. Refusal to comply with instructions or use of insulting or threatening language to official superior.

Suspension for 5 work days.

Suspension for 2 pay periods, to removal.

2. Refusal to accept a detail, transfer or reassignment.

Removal

3. Failure to report for duty as detailed, transferred, or re-assigned.

Removal

Improper Use of Intoxicants:

1. Being under the influence of intoxicants while on official duty, including reporting for duty under the influence.

Reprimand, specifically warning of severe action including removal in any future case.

Second Offense: -
Suspension for five days.

Third offense: -
Removal

2. Absence from duty because of excessive use of intoxicants.

Reprimand, specifically warning of removal.

Second offense: -
Suspension for 5 days.

Third offense: -
Removal.

3. Excessive use of intoxicants which did not interfere with official duties, but which is notorious.

Reprimand, warning of removal.

Second offense: -
Suspension for 5 days.

Third offense: -
Removal

4. Driving Government-owned or Government-leased vehicle (or privately-owned vehicle on official business) while intoxicated.

Removal

DELINQUENCY OR MISCONDUCTFIRST OFFENSESUBSEQUENT OFFENSESProhibited Political Activity:

Engaging in types of political activity prohibited by law or by Civil Service Commission Regulations. See Chapter 57, Title 8, Administrative Regulations, & Federal Personnel Manual, Chapter C-2.	Removal	
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Gifts or Favors to Official Superiors:

1. Soliciting or making contribution for a gift to an official superior, or acceptance by such superior.	Removal	
2. Borrowing money from a subordinate employee or securing his endorsement on a loan.	Suspension for 1 pay period, to removal.	Removal.

<u>Acceptance of loans, gratuities, favors, etc. from persons, firms, or corporations with whom the employee has official relations.</u>	Removal	
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Neglect of Duty:

1. Negligence in performing official duties, including failure to follow instructions.	Suspension for 5 days to 1 pay period	Suspension for 1 pay period, to removal
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DELINQUENCY OR MISCONDUCTFIRST OFFENSESUBSEQUENT OFFENSES

2. Unsatisfactory performance of the major aspects of his duty.

Removal

Unsatisfactory Attendance:

1. Absence from duty without permission and without adequate justification. (Absence must be carried on the time and attendance report as Absence Without Leave.)

Suspension without pay for 1 week.

Suspension for 1 pay period, to removal.

2. Excessive tardiness without adequate justification.

Reprimand

Suspension for 1 pay period, to removal.

SECTION 1 - INTRODUCTION

2215. DELEGATION OF AUTHORITY. Authority is hereby delegated to each agency head to take all adverse actions affecting an employee, including removal, for all *→employees excepting those in the following positions:

- a. Positions involving Region-, Area-, State-, and Country-wide administration
- b. All Schedule C, Supergrade and P. L. 313 positions
- c. Hearing Examiner positions
- d. Positions in GS-14, its equivalent, and above. ←*

2216. REDELEGATION. Each agency head shall redelegate the authority above delegated to the same levels to which employment authority is delegated. Exceptions shall be made only with the approval of the Director of Personnel. This shall not preclude the head of each agency from exercising the authority delegated above, when, on a case basis, his judgment so dictates.

2217. RELATION TO THE OFFICE OF THE SECRETARY. a. Secretary's Authority. No delegation or authorization prescribed herein shall preclude the Secretary from exercising any of the powers or functions or from performing any of the duties conferred herein. No delegation or authorization prescribed herein shall preclude the exercise of any delegation or authorization otherwise provided to the Under Secretary, Assistant Secretaries, Administrative Assistant Secretary, the Director of Agricultural Economics, or the Director of Personnel.

b. Action by Director of Personnel. In all cases in which the proposed adverse action cannot be taken under delegated authority, the agency shall submit to the Director of Personnel its recommendation for appropriate action. The agency shall submit with its recommendation any investigative report and a memorandum of analysis. If no formal investigation was conducted, the agency shall submit a memorandum describing the unsatisfactory conduct

or services in detail, together with the best available evidence. Such evidence shall include written statements by persons having direct knowledge of the unsatisfactory conduct or services and all pertinent documents. The memorandum of recommendation shall also include information of the employee's date of birth, length of service in this Department, and right to veteran's preference. The report, memorandum, and attachments shall be submitted in duplicate if the employee has appeal rights to the Civil Service Commission. The Office of Personnel will initiate whatever procedure is required to take the necessary action.

c. Actions by Agency at Request of the Office of the Secretary. Disciplinary actions which the Office of the Secretary has requested an agency to take and actions which the agency has announced intentions of taking shall be initiated by the agency within thirty (30) days of such request or announcement.

2218. TYPES OF ADVERSE ACTIONS. Adverse actions for disciplinary reasons range from a letter of reprimand to removal. In arriving at a decision as to the appropriate penalty in a given case, the Department endeavors to follow the principle of like penalties for like offenses. However, consideration should be given not only to the nature of the offense, but also the circumstances surrounding it, and to the length of service and previous record of the employee involved. No disciplinary or other adverse action shall be initiated against an employee unless there appears to be sufficient evidence to support the proposed action.

a. Letters of Reprimand.

(1) General. Letters of reprimand include any letter of caution, warning, admonition, or censure based on delinquency or misconduct issued to an employee by an authorized official. Such a letter must be issued if a disciplinary suspension is imposed. A letter of charges is not required when it is known initially that action is to be limited to a letter of reprimand.

(2) Contents and signature. Each agency letter of reprimand must be signed by an authorized official. When it is believed that because of the rank or position held, or for other appropriate reason, a Secretarial letter of reprimand would be more appropriate, recommendation shall be submitted to the Director of Personnel for the issuance of such a letter. Each such

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APPEALS SYSTEM

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recommendation shall be in the form of a memorandum which must include complete details of the employee's improper actions. Letters of reprimand shall cite the specific acts for which the employee is reprimanded, and shall include a warning that a repetition of the offense or other improper conduct may

(Continued on next printed page)

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*→lead to a recommendation for more drastic disciplinary action. They shall inform the employee that a copy of the letter will be filed in his official personnel folder. NOTE: Preliminary letters of admonition, caution, or warning (confirmation of oral reprimands) addressed to the employee by his official superior need not be placed in the official personnel folder.

b. Suspension from Duty Without Pay. Suspension is a means of placing an employee in an involuntary non-duty and non-pay status. Under certain circumstances, it may include periods of enforced leave. It is imposed as a disciplinary penalty when it is believed that the employee may be worthy of retention in the service, but action more drastic than a letter of reprimand is required. It is mandatory to impose a disciplinary suspension in certain situations prescribed by law. For example, a suspension of not less than 1 month must be imposed for using or authorizing the use of Government-owned motor vehicle for other than official purposes. Under certain circumstances employees may be placed on suspension as an interim action pending further consideration of their cases or decision with respect to final action. It is the Department's policy however, to retain an employee in duty and pay status pending final decision in his case, except when it clearly would be prejudicial to the best interests of the service. (See Section 2--Procedures.)

c. Removal. Obviously, removal of an employee is the most drastic administrative action that can be taken against an employee. Such action is taken where removal is specified by law as the required penalty, or where the removal is for such cause as will promote the efficiency of the service. There are some offenses for which removal is made mandatory by law, examples of which include commission of prohibited political activities (unless the Civil Service Commission unanimously finds that removal is not warranted, in which case a minimum suspension from duty of 90 days must be imposed), use of appropriated funds to influence Congress, acceptance of a bribe, and participation in a strike against the Government of the United States. Offenses for which removal is not mandatory but which are usually considered sufficient grounds for removal include criminal, infamous, dishonest, immoral or notoriously disgraceful conduct, habitual excessive use of intoxicating beverages, refusal to accept detail or transfer, and presentation of false claim or falsification of official records with intent to obtain personal gain. For a more detailed statement←*

*→of penalties, see the "Guide for Use in Handling Disciplinary Cases." To achieve a reasonable degree of uniformity in the imposition of penalties, agencies should consider the penalties suggested therein and normally apply or recommend those indicated unless there appears to be substantial justification for deviating therefrom. In such cases, the justification shall be set forth in detail.

d. Separation - Disqualification. The separation of an employee in the competitive service, whose work performance or conduct during his trial period has failed to demonstrate his fitness or qualifications for continued employment, is a necessity to maintain the Department's standards. Likewise, should it be ascertained subsequent to an appointment that the employee has falsified his application or other employment documents with respect to matters so material that the appointment would not have been made had the truth been disclosed, the employee must be separated for the falsification. Generally the employee has falsified with respect to an arrest record, dismissal for cause from previous employment or separation from the armed services under other than honorable conditions. It is important to keep in mind that although the Civil Service Commission may rate an employee eligible, the Department and its agencies may, nevertheless, proceed independently of the Commission to effect the separation of an employee during his probationary period for pre-existing causes. (See Section 2-- Procedures).

e. Reduction in Rank or Compensation. Section 14 of the Veterans' Preference Act of 1944 provides in part that no permanent or indefinite preference eligible who has completed a probationary or trial period may be reduced in rank or compensation unless he has had 30 days advance written notice of the proposed adverse action, and an opportunity to answer personally and in writing. By Executive Order 10988, the same procedural protection has been extended to employees in the competitive service who have completed a probationary or trial period but who do not have veterans' preference. What constitutes reduction in "rank" has not been defined. When reassignment is contemplated, consideration must be given as to whether the employee's rank or compensation will be reduced. If a reduction in rank is apparent, or in case of doubt, a formal statement of the reasons for the proposed action should be given with opportunity for reply.

f. Resignation - Employee Not in Good Standing. Whenever it ←*

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*→is proposed to prefer charges with a view to the removal of an employee the agency may give him the opportunity to resign. He shall be informed that if he decides to resign, the records will show the facts as to his delinquency or misconduct; that it is his right, if he elects not to resign, to have charges preferred against him in writing to be allowed a reasonable length of time to submit his answer, and to be heard in person; and that if he elects to await the preferment of formal charges, his case will not be prejudiced thereby. Under no circumstances shall coercion be used for the purpose of securing a resignation. The resignation must be entirely voluntary and submitted with the understanding that it will be accepted as that of an employee not in good standing.

SECTION 2 - PROCEDURES

2220. CIVIL SERVICE COMMISSION REGULATIONS. See Chapter S-1, including Appendices A, B, and C to Section 5, and Parts 9 and 22 of Chapter Z-1, Federal Personnel Manual for discussion of procedures to effect adverse actions. See Chapter S-1, Section 4, for discussion of personnel actions which an agency has determined will promote the efficiency of the service, but which adversely affect the employee. These are actions initiated by the agency, and not by the employee.

2221. DOCUMENTATION OF EVIDENCE. a. Performance Cases. It shall be the responsibility of each agency head to issue such instructions as will assure that supervisory personnel document cases of unsatisfactory performance. Agency personnel officers shall see that cases in which charges of unsatisfactory performance are to be preferred are adequately documented by statements of supervisors or other evidence to support each charge and specification.

b. Misconduct Cases. Normally, in the more serious cases, formal investigation will have been conducted by the Investigations Division, Office of Personnel, or by one of the agencies having its own investigative staff, where such misconduct is incidental to a program operation. Agencies shall request formal investigation by the Investigations Division, Office of Personnel, whenever employee misconduct not to be investigated by the agency as part of ←*

a program operation, appears to be of a nature sufficiently serious to warrant disciplinary action more severe than a short suspension from duty without pay.

2222. LETTERS OF CHARGES. a. When Required. Employees in the following categories shall not be removed, suspended, or reduced in rank or compensation until charges have been preferred against them and they have been allowed a reasonable time to submit their answers and affidavits or other evidence in support thereof:

Employees in the competitive service who have completed their probationary or trial periods.

Employees having veterans' preference who have completed one year of current continuous service in an excepted position.

NOTE: Employees in both of the above categories must receive 30 full days advance notice of proposed adverse action before suspension for more than 30 days, removal, or reduction in rank or compensation may be consummated.

→Employees serving in their probationary or trial periods in the competitive service whose removal is proposed for reasons that existed to any extent before appointment. ←

b. When Not Required. Letters of charges are not required for the separation, suspension, reduction in rank or compensation, of employees in the following categories:

(1) Employees in competitive positions who are serving in their probationary periods when adverse action is proposed upon the basis of unsatisfactory service or conduct occurring during the probationary period.

(2) Employees serving under temporary appointments pending establishment of registers. Persons serving under TAPER appointments acquire no status or tenure and none of the benefits derived therefrom. This applies irrespective of length of service or veterans' preference.

(3) Employees serving under temporary appointments to positions in the competitive service.

(4) Employees in excepted positions. EXCEPTION: Employees who have veterans' preference (including employees serving under temporary excepted appointments) and who have completed one year of current continuous service must be given a letter of charges when suspension for more than 30 days, reduction in rank or compensation, or removal is proposed.

c. Contents.

(1) Specificity. A letter of charges to an employee shall consist of a concise, factual statement of each specific act of misconduct or delinquency of which he is accused. It must be stated in sufficient detail and with sufficient clarity to enable the employee to prepare a specific and detailed answer, and to permit him to obtain and submit with his answer such corroborating evidence as may be available to him. Charges must be specific enough to provide a fair opportunity for refutation by the innocent, who have no knowledge of the conduct charged, as well as by the guilty, who do possess such knowledge. Thus, a general charge of "improper conduct" is not sufficient, even though the employee may be fully aware of the conduct to which the charge alludes. To comply with legal requirements of specificity, each separate act of misconduct shall be related and identified as to time, place and circumstances of its occurrence. Each charge shall be supported by evidence believed sufficient to sustain the charge or specification thereof. A charge should not be made unless there is a reasonable degree of certainty that it can be sustained.

(2) Right to reply. The letter of charges must advise the employee that he is directed to show cause why disciplinary action should not be taken against him. If he has a right to make an oral answer (see 8 AR 2222f) the letter of charges shall inform him of his right to answer the charges personally, or in writing, or both personally and in writing. It will inform him that if he wishes an oral interview (personal conference), he must make a written request for it, either in his written statement in answer to the charges, or separately if no written answer is submitted. It further will inform him that it is preferable that he submit a full and complete written answer prior to the holding of such conference. The agency should advise the employee of the arrangement for the personal conference if the employee requests it.

If the employee does not have a right to make an oral answer he shall be directed to make a written answer.

(3) Time to reply. The letter of charges shall inform the employee that he has a specific number of days (a reasonable time) in which to submit his answer together with supporting evidence, and that he is directed to show cause why disciplinary action should not be taken against him. The most severe disciplinary action proposed against the employee shall be specifically described. For example: "You are directed to show cause why you should not be removed from the service, suspended from duty without pay, or otherwise disciplined."

d. Issuance. Normally, the employment officer having jurisdiction over the employee shall prepare and issue the required letter of charges. However, when circumstances so warrant, the head of the agency or other appropriate official may exercise this function.

e. Exceptions to Notice Period and Opportunity to Prepare Answer. Advance written notice and opportunity to answer shall not be necessary in cases of furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring immediate curtailment of activities.

In cases where reasonable cause exists to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed, the employee need not be given the full thirty (30) days advance written notice, but must be given such lesser number of days advance notice and opportunity to answer as under the circumstances is reasonable and can be justified.

f. Oral Answers to Charges. All veteran preference eligibles who have had one year of current continuous service in an excepted position and all employees in the competitive service who have completed their probationary or trial periods, and who have had charges preferred against them looking to their removal, suspension for more than 30 days, or reduction in rank or compensation, shall be afforded an opportunity to make a personal answer if they specifically request it. This can be a supplement to or in lieu of a formal written answer to charges. If the employee asks to be heard orally, such conference shall be held, *→prior to the decision for final action, by an official of the employing agency designated for that purpose, or by such other Department official as may be designated by the Director of Personnel.←* A summary

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of the conference, together with the recommendation for disciplinary action by the official holding it, shall be forwarded to the agency personnel officer having jurisdiction.

2223. SEPARATIONS REQUIRING LETTER OF CHARGES. The following actions can be effected only by following the procedures in 8 AR 2222:

- a. Removal - for delinquency, misconduct or unsatisfactory performance.

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- *→b. Separation - Disability - for physical or mental incapacity for continued service. (This action should be postponed until the possibilities of disability retirement have been exhausted.)
- c. Separation - Failure to Accept New Assignment - when an employee refuses to accept a new assignment which the agency has determined would serve the best interests of the service.
- d. Separation - Failure to Accompany Activity - when an employee fails to accompany his position when it is moved to another organizational or geographic location.
- e. Separation - Disqualification - separation of probationers for pre-existing causes - employees in the competitive service (veteran or non-veteran) who have not completed their probationary or trial periods and whose services are to be terminated for reasons based in whole or in part on conditions arising prior to their appointments.

2224. SUSPENSIONS REQUIRING LETTER OF CHARGES. a. Competitive Service. No employee in the competitive service (veteran or non-veteran) who has completed a probationary or trial period may be suspended from duty without pay for more than 30 days without a letter of charges, opportunity to answer orally or in writing, or both, and a written decision. The employee must receive a full 30 days advance notice, i. e. , effective date of the suspension may not be earlier than 30 days from his receipt of the letter of charges. For suspensions of 30 days or less, he must receive a letter of charges, have an opportunity to answer in writing (a reasonable time, usually not less than 10 days) and receive a written decision.

b. Excepted Service. No veteran preference eligible who has completed one year of current continuous service in an excepted position may be suspended for more than 30 days unless he has received a full 30 days advance written notice of proposed adverse action, with opportunity to answer both personally and in writing. He must be granted an oral interview if he so requests, and receive a written decision on or before its effective date.

2225. SUSPENSION - EMERGENCY SITUATIONS - DUTY AND PAY STATUS PENDING FORMAL ACTION. a. Applicability.←*

*→ This paragraph applies when it is imperative that an employee be temporarily removed from active duty in his position because he fails or refuses to perform his duties or because circumstances are such that his retention in an active duty status might result in damage to Government property or be detrimental to the interests of the Government or injurious to the employee, his fellow workers, or the general public. In emergency situations in which, because of illness or mental or emotional disturbance, he is not ready, willing, and able to perform the duties of his position, an employee may be placed on enforced annual leave, sick leave, or leave without pay, while decision is reached as to further action.

b. Leave or Suspension. If the agency determines that it is inadvisable to reassign the employee or otherwise keep him on active duty, he may be placed on leave with his consent. If he does not consent to being placed on leave, he may be suspended in accordance with the procedures set forth in this Chapter; however, the notice period between his receipt of the letter of charges and effective time of the suspension must be at least 24 hours.

c. Non-Duty-With-Pay Status. If the agency determines that it would not be in the public interest to have an employee on active duty for even a short period; and if it is further determined that he is ready, willing, and able to perform his duties; he may be placed in a non-duty-with-pay status without charge to leave for the length of time (not to exceed 5 days) necessary to prefer charges, obtain his answer and suspend him.

d. Filing Charges Concurrently with Suspension. In emergency situations requiring prompt suspension, charges looking to the employee's removal may be preferred so that the notice period will run concurrently with his suspension. The letter of charges proposing the employee's suspension during the notice period preceding his removal must clearly state the reasons making necessary his absence from duty during that time. If the removal of such an employee is proposed, the letter of charges proposing his removal should be handed to him on or before the day preceding the effective date of his suspension.

e. Suspension of Veteran Preference Eligible in Excepted Position. A veteran preference eligible who is in an excepted position may be suspended during the advance notice period of a proposed removal for up to 30 days without a letter of charges, but he must←*

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- *→receive a written notice of the decision to suspend at least 24 hours in advance of the effective date of the action. The reasons for not retaining the employee in an active duty status during the notice period shall be included in the notice of suspension for possible review by the Civil Service Commission.

2226. SEPARATION - DISQUALIFICATION.- SEPARATION OF PROBATIONERS FOR UNSATISFACTORY CONDUCT OR SERVICES DURING THE PROBATIONARY PERIOD. In effecting the separation of an employee in the competitive service because his work performance or conduct during his probationary or trial period has failed to demonstrate his fitness or qualifications for continued employment, the employee must be given a notice in writing which will inform him of the reasons for his separation and the effective date. The SF-50 effecting his separation may be used as this notice. The "Remarks" of the SF-50 (or accompanying letter) must state why he is being separated and, as a minimum, state the agency's conclusions as to the inadequacies of his performance or conduct. Separation action must be completed within the probationary period.

2227. RESIGNATION. - NOT IN GOOD STANDING. a. Notification to Employee. The employee must be informed prior to acceptance of resignation that the SF-50 will contain an accurate statement of the circumstances leading to his resignation and that his stated reason and a concise statement of his improper action (the actual reason) must be included under "Remarks" on the SF-50 that is issued to consummate the action. For example, "Resigned in lieu of answering charges of falsification of application with respect to arrest record." If the employee is in a category which does not require preferment of charges to effect removal, the SF-50 shall include under "Remarks" a statement such as, "Resignation accepted in lieu of removal for insubordination."

b. Oral Resignations. In every case of resignation an effort should be made to obtain a signed resignation form. However, an oral resignation may be accepted if the employee has unequivocally indicated his intention to give up his position. The memorandum that is submitted to the Investigations Division, Office of Personnel, shall set forth the circumstances.

c. Withdrawal. ←*

*→(1) Until a resignation which bears a future effective date has been accepted, it may be withdrawn prior to its effective date by the employee, whether or not the employing agency consents to the withdrawal.

(2) A resignation may be withdrawn after acceptance but before the effective date, only with the consent of the employing agency.

(3) Resignation of employees involved in delinquency or misconduct shall be forwarded promptly to the employment officer, and shall be accepted and processed promptly as resignations of employees not in good standing. It is the receipt, rather than merely the mailing, of the acceptance, that constitutes notice of the employee. Hence, the employee's copy of the fanfold processing the resignation should be forwarded to him promptly by certified mail, return receipt requested. If, for any reason, the fanfold cannot be prepared promptly upon receipt of a resignation, a memorandum of acceptance shall be forwarded to the employee by certified mail.

2228. DECISIONS. a. Action by the Employment Officer. The employee's written answer, if any, and all evidence submitted by the employee in support of his answer, together with the summary and recommendation of the official holding the personal conference if one was held, shall be considered carefully by the employment officer, who shall then: (1) reach a finding as to whether each separate charge or specification thereof is sustained or not sustained and, (2) prepare a written decision, including notice of the disciplinary action, if any, to be taken on the basis of those charges and specifications found to be sustained. Similarly, decision must be reached on the record if no written or oral answer was made. The decision must be based entirely upon the matters specified in the letter of charges. If the charge or specification thereof is not sustained, the employee should be so notified.

b. Contents of Notice of Decision. If the decision, is adverse to the employee, the notice shall inform him of the action to be taken, and its effective date; and where appropriate, of his right to appeal to the Secretary of Agriculture, or to the Civil Service Commission (see Section 3). The notice must reach the employee on or before the effective date of the action.

c. Issuance of SF-50. If the charges are sustained, an SF-50 ←*

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shall be issued to record the action if removal, suspension from duty without pay, or reduction in rank or compensation is involved. Insert under "Remarks" on the SF-50, a concise statement of the reasons for the action.

2229. DOCUMENTS TO THE DIRECTOR OF PERSONNEL. In all adverse actions based upon letters of charges (regardless of appeal) the officer taking the action shall *** submit to the Director of Personnel, Attention, Chief, Review and Adjudication Division, copies (in duplicate) of the letter of charges, the employee's answer, the final decision, and a memorandum containing a concise statement of the reason for the action. *→A copy of the letter of charges should be transmitted to the Director of Personnel as soon as it is issued and the remaining documents should be transmitted when the final decision is signed. ←* If a letter of reprimand only is issued, a copy of the letter of reprimand shall be submitted, together with copies of any memoranda to or from the employee giving the details of the case. In all other actions (where adverse action is taken against an employee without issuing letters of charges because of the type of appointment involved) only the memorandum explaining the reason for the action shall be submitted. This memorandum shall set forth the type of employment and the date and place of birth.

In each case of resignation of an employee not in good standing, the agency shall submit to the Review and Adjudication Division, Office of Personnel, a memorandum containing the employee's date and place of birth and details of the misconduct, together with a recommendation as to whether the employee's personnel folder should be flagged. In all appeal cases, the entire file shall be forwarded, as provided in Section 3 thereof, immediately upon receipt of information that the employee has filed an appeal, whether to the Department or the Civil Service Commission.

*→SECTION 3 - APPEAL RIGHTS AND PROCEDURES

2230. GENERAL. The provisions of this section establish the Department's system for administrative reconsideration of decisions to take adverse action against employees. These provisions are in conformance with the regulations of the Civil Service Commission issued under authority of Executive Order 10987 of January 17, 1962.

2231. EMPLOYEE COVERAGE. a. Employees Covered. Except as provided under b below, appeals under this section are the right of any present or former career, career-conditional, overseas limited, or indefinite employee in the competitive service who has completed a probationary or trial period, and any employee having competitive status and occupying a position in Schedule B under a non-temporary appointment.

b. Employees Not Covered. Appeals under this section are not available to:

- (1) An employee serving a probationary or trial period.
- (2) An employee serving under a temporary appointment (including temporary appointment pending establishment of register).
- (3) A reemployed annuitant.
- (4) An employee in a position outside the competitive service except an employee having competitive status and occupying a position in Schedule B under a non-temporary appointment.

2232. ACTION COVERAGE. a. Actions Appealable. The following adverse actions are appealable under this section:

- (1) Removal.
- (2) Suspension for more than 30 days.
- (3) Reduction in rank or compensation including that which is taken at the election of the agency after a classification decision by the Department or the Commission. ←*

(4) Furlough without pay.

b. Actions Not Appealable. This section does not apply to appeals from actions:

(1) Which are taken under reduction in force regulations;

(2) Which are taken pursuant to instructions or decisions of the Commission;

(3) Which are taken under P. L. 733, 81st Congress and E. O. 10450;

(4) Which are taken at the request of the employee; and

(5) Which separate employees serving probationary or trial period or serving under temporary appointment, for unsatisfactory performance or conduct, or for reasons based in whole or in part on conditions arising prior to appointment. (See Section 4.)

*→2232.5. AGENCY AND DEPARTMENT REPRESENTATION IN APPEALS. a. Departmental Representation in Appeals Before the Commission. In all appeals to the Civil Service Commission in accordance with Subpart B of Part 22 of the Civil Service Regulations, either a representative of the Office of Personnel or a person designated by the Director of Personnel will act for the Department and the employing agency. Therefore, the agency involved will immediately advise the Director of Personnel of any notice that such an appeal has been made to the Commission.

b. Agency Representation in Appeals Under the Departmental Appeals Procedure. In all appeals to the Secretary from the adverse actions described in the preceding paragraph under the Departmental Appeals Procedure, the agency involved will designate a representative to act for the agency. The agency representative will be identified to the Director of Personnel and the Hearing Officer in initial correspondence to those officials. ←*

2233. APPEAL RIGHTS. a. With Whom. An employee covered under this section has the right to appeal an agency decision to take an adverse action subject to appeal under this section to the Secretary of Agriculture and/or to the Civil Service Commission.

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If the employee elects to appeal initially to the Civil Service Commission, he forfeits his right to appeal to the Secretary. If the employee elects initially to appeal to the Secretary, he is entitled to appeal to the Civil Service Commission if the final Secretarial decision is adverse to him, or if his appeal to the Secretary is not completed within 60 days. However, appeals to the Secretary and to the Civil Service Commission will not be processed concurrently.

b. Scope of Appeal. The appellate review of the appeal shall include, but is not limited to, a review of agency and Commission procedural requirements for effecting the adverse action, as well as the issues of fact raised during the appellate process.

c. Time Limits for Filing Appeal.

(1) Initial appeal. Initial appeal to the Secretary, or to the Civil Service Commission may be filed at any time after the receipt by the employee of his agency's decision to take

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*→adverse action, but must be received not later than 10 calendar days after the effective date of the action. On appeals to the Secretary this time limit may be extended in the discretion of the Director of Personnel, upon a showing by the employee that he was not notified of the applicable time limit, or that circumstances beyond his control prevented him from filing his appeal within the prescribed time limit, or for other reasons deemed sufficient by the Director of Personnel.

(2) Subsequent appeal. An employee who filed his initial appeal with the Secretary rather than the Civil Service Commission, is entitled to appeal to the Civil Service Commission within 10 days after the receipt of the decision of the Secretary adverse to him following the initial appeal. He may also appeal to the Civil Service Commission if 60 days after filing his appeal to the Secretary his appeal is not completed. In such latter case, the employee's action will terminate the appeal he has pending with the Secretary.

d. How to File Appeal.

(1) To Secretary of Agriculture. An employee shall submit his appeal to the Secretary in writing. It shall be directed to the Director of Personnel. The appellant shall state the reasons (facts and circumstances) on which he bases his belief that the agency's action against him was unjustified or unwarranted, or wherein it was based on procedural deficiencies. The appeal shall include his request, if any, for a hearing.

(2) To the Civil Service Commission. Initial or subsequent appeals to the Civil Service Commission shall be filed with the appropriate regional office of the Civil Service Commission for field employees, or with the Appeals Examining Office, Civil Service Commission, Washington 25, D. C. for employees in the Washington, D. C. Metropolitan Area.

2334. NOTICE OF APPEAL RIGHTS. Each agency decision to take adverse action which is subject to appeal under this section shall include a notification to the employee of his appeal rights and procedure for filing appeals as provided under 8 AR 2233. This notice shall also inform the employee where in the agency he may obtain information on how to pursue his appeal. ←*

*→2235. RIGHTS OF APPELLANT IN PRESENTATION OF APPEAL.

a. General. In presenting his appeal, the employee shall:

- (1) Be assured freedom from restraint, interference, coercion, discrimination or reprisal.
- (2) Have the right to be accompanied, represented, and advised by a representative of his own choosing, and
- (3) Be assured a reasonable amount of official time if he is otherwise in active duty status.

When an employee of the agency is designated as a representative by an employee appealing under this section the representative shall, in presenting the appeal be assured freedom from restraint, interference, coercion, discrimination, or reprisal and be assured a reasonable amount of official time.

b. Status of Employee Who Appeals. An appeal either to the Secretary or to the Civil Service Commission shall not stay the adverse action but it shall become effective on the date set by the employing agency.

c. Allegations of Discrimination. When an employee alleges in his appeal to the Secretary that the adverse decision by the agency was based in whole or in part on discrimination because of race, creed, color, or national origin, review of his allegation will be made under the provisions of Executive Order 10925 and the regulations set forth in Chapter 46, Title 8 AR and the regulations of the President's Committee on Equal Employment Opportunity. For this purpose, the case shall be returned to the agency for determination with respect to the discrimination allegation. No final decision shall be made to sustain the appealed adverse action prior to receipt of the agency's findings on this issue. However, the adverse action may be reversed prior to the receipt of such findings.

d. Denial of Hearing. An opportunity for a hearing or a request for a hearing may be denied in the discretion of the Director of Personnel only (1) when it is his decision that a hearing is impracticable by reason of unusual location of the employee or other extraordinary circumstances or (2) in connection with an appeal when he finds that the employee failed to request a hearing when submitting his appeal. ←*

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*→e. Termination of Appeal.

(1) By the Department. The Department will hold an appeal to have been abandoned and terminated accordingly if an employee fails to respond as directed within the time periods allowed, or to attend the hearing as scheduled, unless prevented therefrom by reasons deemed sufficient by the Director of Personnel and the employee has made due request for an extension of time in which to comply or to attend. The Department may, however, adjudicate the appeal even if the employee does not comply as required, provided there is, in the opinion of the Director of Personnel, information sufficient on which to base a decision. The Department will hold an appeal terminated promptly upon receipt of information that the employee has filed an appeal from the same decision to the Civil Service Commission and the Commission has accepted such appeal.

(2) By the employee. An employee may elect to terminate his appeal to the Secretary when such appeal has not been completed within 60 days after filing, by appealing to the Civil Service Commission.

f. Death of Employee. An employee's appeal properly filed before his death shall be adjudicated including, when necessary, cancellation of the adverse decision and continuation of the employee on the agency's rolls to the date of death.

2236. PREPARATION FOR THE HEARING. a. Notification to the Employee. The Director of Personnel will acknowledge the receipt of the employee's appeal. If the appeal is timely and a hearing has been requested, he will inform the employee that his appeal will be referred to a Hearing Officer and that he will be notified by the Officer of the time and place of the hearing. The employee will be advised of his right to appear personally and to be accompanied, represented and advised by a representative selected by him, or by counsel. Further, the employee will be informed that if he engages counsel, all fees and expenses, including travel expenses for counsel, must be borne by the employee; that expenses of any witnesses he may wish to present who are not Department employees must be paid by him; but that expenses of witnesses who are Department employees will be paid by their agency.

b. Notification to Agency. The Director of Personnel will notify←*

*→the agency that an appeal has been filed by the employee, and whether a hearing has been requested. The agency upon receipt of such notice shall forward the entire file, in duplicate, together with the employee's official personnel folder, to the Director of Personnel.

c. Selection of Hearing Officer. Within 5 calendar days of receipt of the appeal the Director of Personnel will select the Hearing Officer. The Hearing Officer will be selected from a roster of Department officials and employees previously designated to serve a period of three years for this purpose. The Hearing Officer in no case will be employed in the same agency or be acquainted in any manner with the employee whose case is under consideration. The Hearing Officer will normally be selected from the general area in which the hearing is to be held.

d. Setting Time and Place of Hearing. The Hearing Officer within 5 calendar days of notification of his selection by the Director of Personnel shall set the time and place for the hearing which shall be as close as practicable to the employee's place of duty. The hearing date shall be set for not later than 20 calendar days after receipt of notification by the Hearing Officer of his selection to serve.

e. Notification of Time and Place of Hearing. The Hearing Officer shall notify the employee, the agency, and the Director of Personnel of the time and place of the hearing. He shall request the employee and the agency to inform him of the names of any representatives and/or witnesses they wish to have present at the hearing.

f. Attendance of Witnesses. The Hearing Officer will consider the requests of employee and the agency for witnesses each desires to attend the hearing and will request the attendance of any of the agency employees as witnesses as he determines necessary. Insofar as administratively practicable, the agency shall make its employees available to the Hearing Officer as witnesses. When the agency determines it is impracticable to comply with such a request, there shall be included in the employee's appeal file the reason for the declination. Employees of the agency who are made available to the Hearing Officer as witnesses shall be considered to be in duty status during this time. Witnesses, if Department employees, shall be assured of freedom from restraint, interference, coercion, discrimination←*

*→or reprisal.

g. Furnishing of Reports and Records. Concurrently with notifying the Hearing Officer of his designation to serve as such, the Director of Personnel shall forward to him the file, including the investigative report, if any, and as a minimum, the letter of charges, the employee's answer, the report of the personal interview, and the agency's decision. A copy of the investigation report will not be given to the appellant and he will not be permitted to make a copy of it. The Hearing Officer, however, will make the complete file including the report of investigation available for examination by the appellant and the employing agency prior to the hearing or during the hearing.

2237. HEARING PROCEDURE. The hearing shall be conducted to bring out pertinent facts including the production of pertinent records. (See Disciplinary Procedures Hearing Manual.)

- a. Technical rules of evidence shall not be applied but the Hearing Officer shall see that evidence is pertinent to the issue.
- b. Each side through its representative, shall have full opportunity to present its case.
- c. Testimony of witnesses shall be under oath or affirmation.
- d. Cross-examination is permitted.
- e. The Hearing Officer shall rule on admissability of evidence and note exceptions taken by each side, for the record.
- f. A full transcript of the hearing will be made whenever arrangements for it can be effected, at the expense of the employing agency, otherwise, a summary shall be prepared by the Hearing Officer from his notes taken at the hearing.
- g. The transcript or summary shall include all pertinent documents submitted to the Hearing Officer for his consideration.
- h. A copy of the transcript or summary of the hearing shall be sent to each side by the Hearing Officer within 5 workdays following conclusion of the hearing, for corrections, deletions or additions. ←*

i. Each side shall sign and return the transcript or summary along with a written statement of any exceptions to the Hearing Officer within 5 calendar days of receipt.

2238. FINDINGS AND DECISION. a. Recommendation. The Hearing Officer shall prepare a detailed memorandum of the case, stating his recommendation with respect to each specification of each charge, if in issue, i.e., whether each should be sustained or not sustained, and a recommendation as to final action which shall be advisory only. Three copies of this statement must be forwarded together with the transcript or summary and the complete file to the Director of Personnel within 10 working days after receipt of signed copies from both parties. The Hearing Officer will furnish the employee and his representative and the employing agency a copy of the Hearing Officer's statement of findings and recommendations.

b. Decision. If there is to be no hearing of the appeal, or upon receipt of the file including the memorandum of findings and recommendations of the Hearing Officer, the Director of Personnel will have the Review and Adjudication Division make a review of the entire appellate record. This review will cover the issues of fact and of compliance with Department and Civil Service procedural requirements for effecting the adverse action. Decision based on this review may sustain the previous adverse decision, substitute a less severe action or reverse the previous decision, and will be signed by one of the following: the Secretary, Under Secretary, an Assistant Secretary, Director of Agricultural Economics, or Director of Personnel; except that when one of these officials made the adverse decision, or gave prior approval for it, the Secretary or Acting Secretary will decide the appeal.

c. Notification of Decision. The employee and his representative shall be notified promptly of the decision on the appeal, and of any appeal rights the employee may have under the Commission's regulations. Likewise, the employee also shall be notified promptly if the appeal is terminated for any reason. *→The Director of Personnel shall send the employee the decision on his appeal and certified true copy will be filed in his official personnel folder.←*

2239. RECORDS. All documents and records pertaining to an employee's appeal must be assembled into a file. This file will be made available for review by the Department or the Civil

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SECTION 4 - OTHER ACTIONS APPEALABLE TO THE CIVIL
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2242. TYPES OF ACTIONS APPEALABLE. a. Sec. 9.102 and 2.301 (c)(2). The following actions are appealable direct to the Civil Service Commission under Section 9.102 and 2.301(c)(2) of Civil Service Commission Regulations. (See Appendices A and B to Section 5, Chapter S-1, Federal Personnel Manual.)

(1) Separations of employees during their probationary or trial periods for reasons based to any extent on conditions that existed before appointment. (For example, separation of probationers based upon falsification of employment documents.)

(2) Suspensions of 30 days or less of employees in the competitive service who have completed a probationary period.

The above actions must be accomplished in accordance with the procedures set forth in Section 2 - Procedures. The notice of decision shall inform the employee of his right to appeal direct to the Commission on the grounds that (a) the agency failed to follow the procedures prescribed by law or regulations, (b) the action was taken for political reasons (except as may be required by law) or (c) the decision resulted from discrimination because of marital status or physical handicap. *→The employee should also be informed that such appeal in writing should be made within ten days after the effective date of the adverse action and should be addressed as provided in the last paragraph of 8 AR 2244. ←*

b. Sec. 2.301 (c)(1). The following actions are appealable direct to the Civil Service Commission under Section 2.301 (c)(1) of Civil Service Commission Regulations (see Appendix B to Section 5, Chapter S-1 of the Federal Personnel Manual.)

Separation of employees because of unsatisfactory performance or conduct during probationary or trial period.

This action must be accomplished by notifying the employee in writing of the reasons for his separation and the effective date of the action. (See Section 2 - Procedures.)

The notice of separation must inform the employee of his right to appeal to the Commission from this action on the grounds that (1) the action was taken for political reasons (except as may be required by law) or (2) that the decision resulted from discrimination because of marital status or physical handicap.

2243. APPEALS BY PREFERENCE ELIGIBLES IN EXCEPTED POSITIONS. a. Employee Coverage. A preference eligible employee who has completed one year of current continuous employment in a position outside the competitive service may appeal direct to the Civil Service Commission under Part 22, Federal Personnel Manual.

b. Action Coverage.

(1) Actions appealable. The following adverse actions are appealable under this section:

- (a) Removal.
- (b) Suspension for more than 30 days.
- (c) Reduction in rank or compensation including those which are taken at the election of the agency after a classification decision by agency, the Department or the Commission.
- (d) Furlough without pay.

(2) Actions not appealable. The following actions are not appealable under this section:

- (a) Decisions of the Commission.
- (b) Actions taken by an agency pursuant to instructions from the Commission.
- (c) Reduction in force actions subject to Part 20 of the Civil Service Commission regulations.

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(d) Appeals from decisions in political activity cases.

(e) Actions taken under Public Law 733, 81st Congress, and any other similar statute which authorizes an agency to take suspension or separation action without regard to Section 6 of the Act of August 24, 1912, as amended, or the provisions of any other law.

2244. NOTICE OF ADVERSE DECISION. For veteran preference eligibles, the following statement shall be included in the notice of final decision and under "Remarks" on all fanfolds to effect removals, suspensions for more than 30 days, and reduction in rank or compensation for disciplinary reasons:

In accordance with the regulations of the United States Civil Service Commission pertaining to appeals under Sec. 14 of the Veterans Preference Act of 1944, you have the right to appeal this decision to the Civil Service Commission not later than 10 days after the effective date of this adverse action.

For field employees, the appropriate regional office of the Commission shall be shown. For employees in the metropolitan area of Washington, D. C., and outside the continental limits of the United States (except Alaska, Hawaii, Puerto Rico and the Virgin Islands) the notice shall show that the appeal is to be filed with Chief, Appeals Examining Office, Bureau of Departmental Operations, Washington 25, D. C.

